

INDEPENDENT CONTRACTOR AGREEMENT
SWINE FINISHING

THIS AGREEMENT, made and entered into this _____ day of _____, 1998, by and between New Fashion Pork, Inc., a MN Corporation (hereinafter "NFP") and _____, whose address is _____ (hereinafter "Grower") and is as follows:

RECITALS

1. That NFP produces and grows feeder pigs and wishes to obtain the facilities and services of Grower for purposes of providing finishing services and facilities for raising feeder pigs to market weight.
2. That Grower currently lacks the facilities but is intending to construct a hog finishing facility for growing pigs on a contract basis with NFP.
3. That the parties have had discussions with respect to entering into such arrangements and agreements under which Grower would provide for the construction of sufficient facilities so as to enter into an Independent Contract Agreement with NFP which understandings and agreements the parties wish to reduce to writing.

NOW, THEREFORE, for and in consideration of the mutual premises, conditions, and agreements contained herein, the parties hereby mutually agree as follows:

1. **PRECONDITIONS TO DELIVERY OF PIGS.**

- a. **Building and Facilities.** Grower will designate a site of 10 acres, more or less, for purposes of construction of a hog finishing facilities. Each facility so constructed on the site shall contain 1 finishing barn(s); a barn being no less than 16,200 square feet; having approximate dimensions of 81 feet by 200 feet; construction to include all facilities and equipment ancillary and necessary for Grower to operate the facility. Grower shall also make provision for proper and sufficient utilities, water, permanent ingress and egress and manure storage and disposal for the duration of this contract. It is specifically understood and agreed by the parties that such documents shall be executed so that the 10 acre site has a perpetual easement with respect to ingress and egress and that such other agreements as may be deemed necessary shall be executed by Grower to guarantee access to water and utilities and manure disposal for the duration of this contract. In the event the survey of the site is deemed necessary by NFP or by Grower's lender, then Grower at his expense will obtain such survey for purposes of obtaining a legal description in recordable form of the site.
- b. **Financial Requirements.** Grower further understands and agrees that as a condition of this contract, Grower shall provide sufficient and adequate proof of financial ability for construction of the finishing unit and continued operation of the facility thereafter. In this regard, Grower shall be obligated, in connection with any construction financing, to do the following:
 - i. To cause construction of the necessary finishing barn(s) and related facilities with financing to a third party lender not to exceed the sum of \$ 340,000.
 - ii. To provide to the lender making available such financing a properly perfected first mortgage and/or security interest with respect to the 10 acre site and all fixtures and equipment used in connection therewith.

- iii. To provide a payment schedule to NFP with respect to said financing which is subject to NFP's prior approval.
- iv. To obtain an acknowledgement of any lender that no future advances will be made with respect to said mortgage and/or security interests other than collection costs, accruing interest or advances necessary to protect collateral held by lender and that in the event of default with respect to any such mortgage or related lending agreements, NFP and any other person designated by it shall be provided with 30 days' written notice of any default and the opportunity, if the Grower is unable, to cure the same. The acknowledgement of lender shall contain a provision that consent to NFP's exercise of the option shall not be unreasonably withheld.
- c. Regulatory Requirements. A condition of this contract is receipt of prior approval by Grower of any and all necessary environmental and/or regulatory requirements including any county zoning approvals, DNR requirements or permits, the necessary manure hauling permits and/or agreements including manure management plan, and any and all other environmental, zoning or regulatory requirements that would be a precondition for operation of the facility contemplated herein. In addition, Grower shall obtain any waivers of siting requirements as may be required by Iowa Code Chapter 455B and, further, Grower shall adhere to any and all separation distances both with respect to location of the facility and with respect to any acres utilized for field application of manure as may be required by Iowa law.

2. TERM OF CONTRACT.

This contract shall be in effect for a term of 10 years commencing with the execution of this Agreement. Unless sooner terminated by default, this contract shall automatically expire at the end of the term stated herein absent the mutual written agreement of the parties.

3. OBLIGATIONS OF NFP.

- a. Delivery of Pigs. NFP will deliver feeder pigs to Grower for feeding and rearing at the facilities constructed by Grower commencing on or about JANUARY 1, 1994. Feeder pigs delivered to grower shall on average weigh approximately 50 pounds.
- b. At all times NFP shall retain ownership of the pigs and Grower agrees to execute any and all documents that may be necessary to properly make of records and provide notice that NFP and not Grower is the owner of the pigs subject to this contract.
- c. Grower shall execute and deliver to NFP a receipt both with respect to all pigs delivered to Grower's premises for sale or shipment during the term of this Agreement. Grower shall be responsible for any and all shortage in pig numbers. Shortage of pig numbers shall be determined by comparing the difference between pigs received by Grower minus death loss and pigs actually shipped from Grower's facility. Grower shall be liable for and pay to NFP the value of any shortage in pigs. The value of pigs shall be determined by comparing the value of pigs marketed from the same shipment in which the pigs were delivered. NFP reserves the right to deduct such value from subsequent payments due and owing to Grower.
- d. NFP will, (at its cost) provide all feed, medicine, supplements and materials consumed by or placed into the herd and will make appropriate arrangements for the delivery of feed and veterinary services and to provide general instructions with respect to the care and proper

husbandry regarding stock and pigs cared for by Grower. NFP shall use its best efforts to provide all reasonable direction and support to Grower in carrying out this contract and to maximize the productive capacity of the facility.

- e. NFP will perform all marketing functions involving the pigs. The Grower will be notified 12 hours in advance of any delivery of pigs to its facility and twelve hours in advance of any removal of pigs from its facility and Grower will be notified of the number of pigs either to be delivered or shipped. In no event shall pigs be removed from the Grower's facility without the prior written consent of NFP.
- f. NFP shall pay to Grower and/or Grower's lender on the 21st business day of the month following that in which the payment is earned by Grower, all according to the Grower payment schedule attached hereto and made a part hereof (but subject to any offsets, deductions or delays of payment provided for in this Agreement). It is understood by the parties that the payment to Grower shall consist of payments for NFP's use of the premises and compensation for care and services with respect to the pigs on Grower's premises and that Grower may designate some or all of the compensation to be paid by NFP for its payment of financing costs of the unit to be constructed by him. NFP agrees that upon request of Grower's lender it will make checks jointly payable to Grower and his lender. A condition of payment is completion of the weekly and monthly record forms (as required by NFP), and which must be submitted by Grower on a weekly or monthly basis together with Grower's report of the required monthly physical inventory. Failure to regularly submit such reports to NFP in addition to being a condition of default, shall entitle NFP to delay payment for each day the report is overdue.

4. OBLIGATION OF GROWER

- a. Grower agrees to provide the finishing facility and properly maintain the same at his expense. Grower shall provide all labor and supervision as may be necessary to grow pigs to market weight including but not limited to loading and unloading the pigs at its facilities, rodent control of premises and herd security. Grower shall furnish the water and electricity needed for the proper care of the pigs. The cost of all electricity and LP shall be paid by Grower when due. In connection therewith, Grower agrees to separately meter and connect the facilities electricity and LP from that of any other farm buildings.
- b. Grower shall be solely responsible for the cleaning of the animals and facility in which they are housed. In the event the manure is not removed from the facility on a timely basis, kept at proper operating levels (as determined by NFP) or in the event there is a risk of overflow from the waste management system, NFP reserves the option to hire the removal of the manure or waste from the facility and deduct the cost of removal from the payments to Grower.
- c. Grower is obligated to immediately notify NFP of any abnormal conditions that may affect the pigs.
- d. Grower agrees that during the term hereof, he will grow pigs only for NFP and not for any other party without the prior written consent of NFP, which consent shall not be unreasonably withheld.
- e. Grower is obligated to fully clean the facility in accordance with NFP's specifications at the end of each grow-out period and to have completed the cleaning within two days. Failure

to have cleaned the facility in such time may prevent NFP from delivering pigs as deemed necessary by it. Therefore, in addition to being a condition of default, NFP shall deduct \$ 72 per day from the next monthly payment due to Grower for each day in excess of two days from the end of any grow-out period during which the facility has not been cleaned according to NFP's specifications.

- f. It is understood by the parties that NFP shall provide feed to the facility for growing its pigs. Grower shall be required to promptly order all feed deliveries from NFP no later than 48 hours prior to feeders running empty. Failure to order delivery of feed at least 48 hours prior to feeders running empty shall entitle NFP to deduct \$ 2.00 per loaded mile for each truckload of feed delivered to the facility from the next monthly payment due to Grower.
- g. Grower agrees at all times to comply with NFP's Production Manual dated October, 1992 as may be amended from time to time by NFP, the terms of which are included in Grower's obligations and which are incorporated herein and made a part hereof. Grower, by his execution of this Agreement acknowledges receipt of the manual.

5. RIGHT OF INSPECTION.

NFP shall have the right to enter Grower's premises to inspect the pigs. In all other respects Grower shall not permit visitor traffic or other inspection of the premises without prior written consent of NFP, it being the understanding of the parties that this requirement is intended to ensure disease control with regard to Grower's facility.

6. INDEPENDENT CONTRACTOR STATUS.

- a. It is understood and agreed that neither Grower nor his employees shall be deemed to be employees of NFP and that Grower and/or his employees are independent contractors engaged by NFP to perform services under this Agreement and Grower is not authorized to act as an agent of NFP for any purpose whatsoever.
- b. In connection therewith, both parties agree that they shall indemnify, defend and hold harmless the other and its officers, directors, employees, affiliates, successors and assigns, from and against all claims, liabilities, actions, losses, damages and expenses (including costs and counsel fees) which may be caused by one of the parties or which may arise out of or relate to one of the parties breach of this Agreement. Each party agrees that it will obtain comprehensive liability and such other insurance in a form acceptable to the other for all liability for injuries or property damage which may occur on the premises or on account of breach of this Agreement. Such insurance shall include but not be limited to loss of pigs on account of structural failure of the building or suffocation on account of failure to maintain proper ventilation. By their execution hereof, the parties acknowledge that they have each purchased insurance of the kinds, in amounts and with terms (including co-loss payee and notice of cancellation) that are acceptable to the other.

7. FORCE MAJEURE.

Neither party shall be liable in any respect for failure, delay in fulfillment or performance of this contract if hindered or prevented, directly or indirectly, by (disruption of delivery of pigs caused by trucking strike or work stoppage) fire, flood, storms or other acts of God.

8. **DEFAULT.**

- a. An event of default hereunder, must be a material event of default. To be material the event must evidence repeated failure to adhere to the terms and conditions of this Agreement, put in jeopardy the health or safety of the herd or represent an impairment of a party's financial or other condition such as to affect the party's ability to carry out the terms and conditions of this Agreement.
- b. In the event of a default, the non-defaulting party must provide no less than 30 days' written notice to the other of the default. In the event that the default is not cured within 30 days (or such other times as may be required by law) (whether by curing the default or taking such measures to cure as may be acceptable to the non-defaulting party) then in addition to the option of terminating this Agreement, the non-defaulting party shall have all remedies that may exist at law or in equity including the remedy of specific performance.
- c. The parties specifically understand and agree that an event of default of this contract shall be a default by Grower with respect to any loan agreements that he may have with a third party lender.
- d. It is further understood and agreed that an event of default by Grower shall occur if the Grower of NFP shall become bankrupt or insolvent or shall involuntarily be placed into the hands of receiver, assignee or trustee in bankruptcy. It shall also be an event of default for Grower to cause or permit the creation of any lien or encumbrance on the facility other than third party lender's mortgage and/or security interest, without NFP's prior written consent.
- e. The parties expressly understand and agree that Grower's failure to follow reasonable written instructions given by NFP directed toward correction of performance with respect to feed waste, mortality, hog or pig comfort, delivery of pigs or other requirements of this Agreement shall also constitute an event of default in addition to any and all other terms and conditions set forth in this Agreement.
- f. In no event shall any time allowed to cure a default nor shall any time allowed for any right of mediation or arbitration preclude the non-defaulting party from seeking injunction or other relief to prevent the recurrence of material defaults hereunder.

9. **SPECIFIC REMEDIES OF NFP.**

The parties hereto understand that this independent contract for growing of pigs is unique in nature. Accordingly, in the event that this Agreement is terminated by default NFP at its option shall specifically retain the right to:

- a. If the contract is terminated on account of Grower's default, then to take possession of the Grower's facility, to make payments to the pre-existing third party lenders and in all respects to continue growing pigs at Grower's facility but under NFP's exclusive direction, under its control, and according to such terms as may be acceptable to NFP for all or a part of the balance of this contract term.
- b. Grower specifically understands and agrees that it will consent to NFP taking possession of said premises in the event of default; that it will not hinder or in any way interfere with NFP's use of possession and quiet enjoyment of the premises; that it will permit NFP to continue to maintain access to all water and utilities, ingress and egress, and land for manure disposal necessary to properly operate the facility; to in all other respects cooperate with NFP

taking possession of and continuing to conduct pig finishing operations at the facility. In connection therewith, Grower has executed the Easement/Assignment attached hereto as Exhibit "B".

- c. If NFP, upon default of the Grower, chooses to exercise this option, it shall pay an annual rental of \$ 500 per year to Grower for the remaining term of the contract so long as NFP is in possession of the premises. In addition, so long as NFP is in possession of the facilities, it shall pay when due all real estate taxes and property damage insurance and shall keep the facility in as good a condition as when NFP came into possession, excepting normal wear, tear and depreciation.
- d. Because of the unique nature of the agreement between the parties, Grower understands and agrees that the rights and remedies granted herein, including in this Paragraph 9 shall be specifically enforceable and may be enforced by injunctive relief or otherwise in the event that Grower fails or refuses to cooperate with regard to surrender of possession of the facility upon his default.

10. **DISPUTE RESOLUTION.**

In the event of a dispute as to the meaning of contract terms, a party may request mediation or arbitration if so required by law. The right to mediate or arbitration shall not, however, apply to a parties default of this Agreement unless required by law.

11. **CONFIDENTIALITY.**

Grower agrees to maintain as strictly confidential the details of this Agreement and will not share information regarding this Agreement or any other information coming into Grower's possession regarding the procedures or operations of NFP with other Growers or industry personnel.

12. **ASSIGNMENT.**

The parties understand and acknowledge that NFP may freely assign this contract. Any assignment on the part of Grower requires the advanced written approval of NFP, which approval shall not be unreasonably withheld.

13. **WAIVER.**

No waiver of any term or provision of this Agreement shall be effective unless set forth in a written document signed by the party charged thereby. Any waiver shall be limited to the circumstance or event specifically referred in the written waiver document and shall not be deemed a waiver of any other term or provision of this Agreement of the same circumstance or event upon any recurrence thereof.

14. **ENTIRE AGREEMENT.**

The foregoing constitutes the entire agreement between the parties. No modification of any of the terms or conditions contained herein may be made except by subsequent written documents signed by both parties.

15. **SUCCESSORS BOUND.**

The provisions of this Agreement shall inure to the benefit of and be binding upon the heirs,

successors and assigns of the parties.

16. EXECUTION OF DOCUMENTS.

All parties agree to execute any and all documents necessary to implement the full terms and conditions of this Agreement.

17. GOVERNING LAW.

The parties agree that this Agreement is made in Jackson County in the State of Minnesota and shall be governed by and construed in accordance with the laws of the State of Minnesota. Any dispute arising herefrom shall be venued in a Court or other appropriate forum of dispute resolution located in the City of Jackson, Jackson County, the State of Minnesota.

IN WITNESS WHEREOF, this Agreement has been executed on the day and year first above written.

Contract Grower

NEW FASHION PORK, INC.

By 
its President

EXHIBIT "A"
PRODUCER PAYMENT SCHEDULE

- I. **Start Up Payments.** Producer shall be paid the sum of \$97.26 per day for each 1000 head barn in Producer's facility. The \$97.26 per day payment shall commence with NFP's first delivery of pigs to a barn and shall end on the day of the next month when the payment revolves to a continuous payment.
- II. **Base Pay.** Producer shall be entitled to receive a base pay of \$2,958.33 per month per barn until such time as the entire amount of indebtedness for the facilities, to the third party lender, has been paid. At that point in time NFP reserves the right to extend the contract for a period of _____ years, and adjust the base pay per month to a mutually agreeable base pay that will not exceed \$2,833 per month.
- III. **Adjustment to Base Pay.** If producers propane and electrical cost exceed \$1,800 per year, NFP will adjust the base pay to \$3,000 per month, upon review of producer's costs. Utilities costs will be reviewed after 12 months of facility operation, and then reviewed on an annual basis.
- IV. **Miscellaneous.** It is the Producer's responsibility to provide all necessary and accurate information with respect to the preparation of production data for his facilities. Failure to provide necessary records in a timely manner and inaccuracies concerning mortality and the number of pigs moved out or marketed will delay the contract payment.

Producer is responsible and liable for all missing pigs. The official head count at the start of the group will be based upon the actual count by the producer and representative of NFP. Any "missing pigs" will be the responsibility of the producer.